

CITY COUNCIL REPORT



Meeting Date: *February 20, 2018*
 General Plan Element: *Economic Vitality*
 General Plan Goal: *Sustain Scottsdale as a tourist destination*

ACTION

Scottsdale Gallery Association Marketing Matching Fund Agreement. Adopt Resolution 11033 authorizing contract No. 2018-028-COS with Scottsdale Gallery Association to match Scottsdale Gallery Association's investment in its 2018 Scottsdale Arts District Guide up to \$30,000 to secure the public benefits from the promotion of the City of Scottsdale, the Scottsdale Arts District and the city-owned cultural attractions located in the Scottsdale Arts District through the Guide. Funds are available in the FY 2017/18 General Fund Downtown/Cultural Programs advertising operating budget, not to exceed \$30,000.

BACKGROUND

The City of Scottsdale's Tourism & Events Department (TED) would like to initiate an Old Town Scottsdale Marketing Advertising Incentive Pilot Program that focuses on leisure tourism and marketing partnerships. The program will strive to encourage Old Town cooperative marketing programs as well as increase partnerships across tourism industry stakeholders.

The Marketing Advertising Incentive Program is designed to:

- Invest the city's financial resources with tourism partners in the Old Town Scottsdale area to increase visitor attendance, spending, revenue, and jobs.
- Provide matching marketing funds through a reimbursement of qualifying marketing paid expenses.
- Encourage the development of innovative and collaborative marketing programs by the business community, hospitality industry and attractions.
- Give special emphasis on increasing visitation to Old Town Scottsdale by strengthening the area's image as a competitive, attractive, culturally-rich and diverse destination.
- Support projects that reach targeted niche markets.
- Contribute to the development and improvement of areas within Old Town Scottsdale through enhancement, expansion, and promotion of the leisure tourism industry.

ANALYSIS & ASSESSMENT

The Scottsdale Gallery Association has expanded its original Main Street Guide (the Guide) to include the City of Scottsdale's Public Art and the city-owned cultural attractions located within the Scottsdale Arts District. Due to the Guide being a cooperative marketing program and including increased partnerships across Old Town Scottsdale and tourism industry stakeholders, this pilot investment is being proposed between the city and the Scottsdale Gallery Association.

The Guide will be at least 68 pages and the initial printing is 35,000, which will be distributed monthly to at least 25 hotels and resorts in the Phoenix Metropolitan area and mailed to 4,000 homes that sold for more than \$800,000 in the last five years. A second round of printing of an additional 20,000 copies of the Guide will be direct mailed to a total of at least 20,000 homes in the Phoenix Metropolitan area in 2018. The Guide will include a full page ad promoting Old Town Scottsdale that contains the web address of the Old Town Scottsdale site. Additionally, logos of the City of Scottsdale and Experience Scottsdale (which is the entity the city contracts with to promote Scottsdale as a destination) will be on the first page and the back cover of the Guide.

RESOURCE IMPACTS

Available Funding

The adopted FY 2017/18 General Fund Downtown/Cultural Programs advertising operating budget is \$100,000. Up to \$30,000 of this budget will be used for this pilot program. As of December 31, 2017 the Downtown/Cultural Programs advertising budget has a balance of \$70,804.

Staffing, Workload Impact

No additional staffing or other resources are anticipated as a result of the proposal.

OPTIONS & STAFF RECOMMENDATION

The Tourism and Events Department recommends the adoption of Resolution 11033 authorizing contract No. 2018-028-COS with Scottsdale Gallery Association to match Scottsdale Gallery Association's investment in its 2018 Scottsdale Arts District Guide up to \$30,000 to secure the public benefits from the promotion of the City of Scottsdale, the Scottsdale Arts District and the city-owned cultural attractions located in the Scottsdale Arts District through the Guide. Funds are available in the FY 2017/18 General Fund Downtown/Cultural Programs advertising operating budget, not to exceed \$30,000.

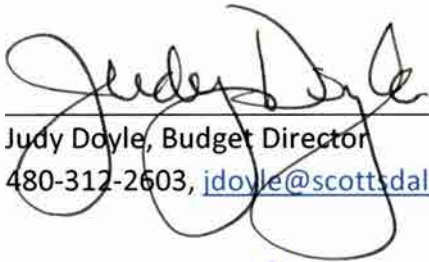
Responsible Department

Tourism and Events Department

STAFF CONTACT

Karen Churchard, Tourism & Events Director, kchurchard@scottsdaleaz.gov

APPROVED BY



Judy Doyle, Budget Director
480-312-2603, jdoyle@scottsdaleaz.gov

2.6.18

Date



Brent Stockwell, Assistant City Manager
480-312-7288, bstockwell@scottsdale.gov

2/6/18

Date



Jim Thompson, City Manager
480-312-2811, jthompson@scottsdaleaz.gov

2/6/18

Date

ATTACHMENTS

1. Resolution No. 11033
2. Agreement No. 2018-028-COS

RESOLUTION NO. 11033

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2018-028-COS WITH THE SCOTTSDALE GALLERY ASSOCIATION AND AUTHORIZING \$30,000 PAYMENT TO THE SCOTTSDALE GALLERY ASSOCIATION TO PRODUCE AND DISTRIBUTE THE 2018 SCOTTSDALE ARTS DISTRICT GUIDE.

WHEREAS, the City of Scottsdale ("City") and the Scottsdale Gallery Association ("Producer") desire to enter into Contract No. 2018-028-COS related to the Scottsdale Arts District Guide (the "Guide"); and

WHEREAS, the City desires to provide funds toward production and distribution of the Guide in order to secure the public benefit of promoting the City of Scottsdale, the Scottsdale Arts District and cultural attractions located in the Scottsdale Arts District through the Guide; and

WHEREAS, City Council has considered the City's expenditure authorized by the Agreement and the direct consideration the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and the City will receive direct consideration substantially equal to its expenditure; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council authorizes an amount not to exceed \$30,000 for use in connection with the production and distribution of the Guide from funds available in the FY 2017/18 General Fund Downtown/Cultural Programs advertising operating budget

Section 2. The City Council authorizes and directs the Mayor to execute, on behalf of the City, Contract No. 2018-028-COS with the Scottsdale Gallery Association.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this ____ day of _____, 2018.

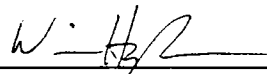
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: William Hylan
Senior Assistant City Attorney

SCOTTSDALE ARTS DISTRICT MARKETING AGREEMENT

THIS SCOTTSDALE ARTS DISTRICT MARKETING AGREEMENT (the "Agreement") is made this 5 day of February 2018 by and between Scottsdale Gallery Association, ("SGA") and CITY OF SCOTTSDALE, an Arizona municipal corporation ("City").

RECITALS

A. SGA is the producer of a certain publication known as the 2018 Scottsdale Gallery Guide (the "Guide"). The Guide provides information about and promotes the Scottsdale Arts District.

B. The City and SGA have agreed that City will pay to SGA City funds ("the Marketing Funds") in a maximum amount of thirty thousand dollars (\$30,000) (the "Marketing Amount") to secure the public benefits of promoting the City of Scottsdale, the Scottsdale Arts District and the City-owned cultural attractions located in the Scottsdale Arts District through the Guide.

C. City is not willing to pay the Marketing Funds to Producer unless Producer provides the deliverables specified herein related to the Guide to promote Scottsdale as a destination and promote City-owned arts venues and facilities.

D. City's willingness to provide the Marketing Funds is conditioned upon SGA's executing and performing this Agreement

NOW, THEREFORE, in consideration of the foregoing and good and valuable consideration received, the parties hereto agree as follows:

1. Funding Limitation. Payment of the Marketing Funds is subject to the various limits contained elsewhere in this Agreement and the following cumulative conditions and limitations:

1.1 The total amount of Marketing Funds City pays under this Agreement shall not exceed the Marketing Amount, minus reductions under paragraph 1.3 and other amounts to which City may be entitled.

1.2 City's payments shall be made only from the City's General Fund. City is not obligated to provide funding from any other source.

1.3 The City may reduce payment or make no payment of Marketing Funds if the City reasonably determines that the SGA has failed to fulfill all terms of this Agreement. The determination of the amount of any reduced payment will be based on the number of requirements in Section 2 that were fulfilled as compared to the number of total requirements in Section 2.

2. Guide Requirements. SGA shall cause the Guide to comply with all of the following requirements:

2.1 The Guide will be at least 68 pages (including cover pages) and the initial printing will be 35,000 copies;

2.2 The Guide will be distributed monthly for 12 months to at least 25 hotels and resorts in the Phoenix metropolitan area.

2.3 After payment of the portion of the Marketing Funds as specified in Section 3.1, there will be a second round of printing of 20,000 copies of the Guide.

2.4 There will be two mailings of the Guide to homes in the Phoenix metropolitan area as follows:

2.4.1 The first mailing will be to 4,000 homes that sold for more than \$700,000 in the last five years;

2.4.2 The second mailing will be to a minimum of 20,000 homes and will be completed by December 31, 2018.

2.5 The Guide will include a full page ad promoting Downtown Scottsdale that contains the web address of the Downtown Scottsdale site.

2.6 The first printing of the Guide will include the logos of the City of Scottsdale and Experience Scottsdale (which is the entity the City contracts with to promote Scottsdale as a destination) on the first page of the Guide and the back cover of the Guide. The second printing of the Guide will include the Old Town Scottsdale logo as well as the City of Scottsdale and Experience Scottsdale logos.

2.7 The Guide will include listings for the City-owned Scottsdale Museum of Contemporary Art, Scottsdale Center for the Performing Arts and Scottsdale Museum of the West.

2.8 The Guide will include a full page of photographs of sculptures and monuments that are part of the City's Public Art Program.

2.9 The Guide will contain a full-page map of the Scottsdale Arts District.

2.10 The Guide will have a half-page history of and introduction to the Scottsdale Arts District.

2.11 If a requirement in this Section 2 cannot be fulfilled due to unexpected circumstances, the Contract Administrator has the discretion to agree to a different requirement in place of the requirement that cannot be fulfilled. If this occurs, the Agreement shall be amended to reflect the new requirement and the amendment may be done administratively, without Council approval.

3. Payment. SGA shall use the Marketing Funds for the sole purpose of making payment to third parties to design, publish, market, and mail and distribute the Guide, including content changes to the Guide for the second printing under Section 2.3.

3.1 Within sixty (60) days after the date of this Agreement, SGA shall provide to City SGA's invoice for 75% of the Marketing Amount. Within 30 days after receipt of the invoice, City shall make payment to SGA of 75% of the Marketing Amount. City shall not be obligated to pay any part of a late invoice.



3.2 No later than December 31, 2018, SGA shall provide to City:

3.2.1 A copy of the Guide;

3.2.2 A written report specifying how SGA complied with the requirements of Section 2 of this Agreement;

3.2.3 A formal, written invoice issued by the third parties to SGA that includes a list of services provided for the Guide and the amount the third party charged SGA for the services; and

3.2.4 A copy of a cancelled check from SGA to the third party showing the payment described on the third party's invoice.

3.3 Subject to Section 3.4, within 60 days of receiving the information required by Section 3.2, City shall make payment of the remaining 25% of the Marketing Amount.

3.4 If the City determines that an audit under Section 4 of the Agreement will be conducted, payment of the remaining 25% of the Marketing Amount will be made within 120 days of the City receiving the information in Section 3.2 provided the SGA fully cooperates in the audit. The SGA's failure to fully cooperate in the audit may delay payment beyond 120 days.

4. Records and Audit Rights. SGA's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract are open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the SGA or any of his payees in accordance with the terms of the contract. The City's authorized representative must be given access, at reasonable times and places, to all of the SGA's records and personnel in accordance with the provisions of this article throughout the term of this contract and for a period of 3 years after last or final payment.

SGA must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section by insertion of these contract requirements in a written contract agreement between SGA and payee. These requirements will also apply to any and all Subcontractors.

If an audit in accordance with this Section, discloses overcharges, of any nature, by the SGA to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by the SGA. Any adjustments and/or payments which must be made as a result of any audit or inspection of the SGA's invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to SGA.

5. Termination. This Agreement shall terminate upon SGA providing to City a satisfactory Invoice, complying with all other requirements of this Agreement, and City paying to SGA the Marketing Funds. However, City may, without further obligation, terminate the Agreement at any earlier time for convenience or cause by giving SGA ten (10) days written notice of the termination.



6. Other City Contracts and Resources. City's obligations to SGA are limited to the specific items detailed in this Agreement. If SGA desires use of City resources, then SGA must pursue those City resources through normal processes. Without limitation, City's support of the Event is not a commitment that such City resources will be available, even if the City resources are discussed in this Agreement. Without limitation, this agreement does not authorize any use of any land or facilities owned, controlled or operated by City or any third party.

7. Indemnification. To the fullest extent permitted by law, SGA, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City, its agents, representatives, officers, directors, officials and employees from and against all third party allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by SGA relating to the Guide, and any work or services in the performance of this Agreement including, but not limited to, any subcontractors, suppliers or others connected with the Guide or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of SGA's customers or employees. SGA's indemnification obligations shall extend beyond and will not be affected by any termination of this Agreement. SGA's liability under this Section 7 is limited to \$1,000,000.

8. Insurance. SGA shall purchase and maintain insurance with coverages and limits as follows:

a. The following coverages are required:

i. "Occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

b. For all insurance policies required by this Section 11, City shall be named as additional insured.

c. City's Risk Management Division may increase or change required insurance coverage and limits from time to time. No reduction in coverage or policy limits is effective without the written approval of City's Risk Manager or his designee.

d. SGA shall purchase and maintain all required insurance from insurance companies licensed to do business in the State of Arizona, or from qualified non-admitted insurers who are authorized to do business in the State of Arizona.

- e. SGA shall provide City, prior to the second round of printing of the Guide being distributed, certificates of insurance as evidence that the required insurance coverages and limits are in full force and effect.
- f. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, SGA shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as required by this Agreement which protects City and SGA. SGA shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements. For purposes of this Agreement, third parties engaged by SGA to design, publish, market, and mail and distribute the Guide are not considered subcontractors.
- g. Required insurance shall be issued by insurance companies licensed to do business in the State of Arizona, or from qualified non-admitted insurers who are authorized to do business in the State of Arizona.

9. Miscellaneous. The following additional provisions shall apply:

- h. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, proposal, draft agreement, discussion outline, correspondence, memoranda or representation regarding the payment of City funds for the Guide.
- i. Delegation. City may designate in writing a designee to receive any of SGA's performances under this Agreement.
- j. Compliance With Law. This Agreement does not waive and is not a substitute for SGA's obligation to comply with all state, local and federal laws, policies and regulations applicable to the Guide.
- k. Assignment. SGA's obligations and rights hereunder shall not be assigned or delegated in whole or in part without City's prior written consent.
- l. Cancellation. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- m. Modifications. Any amendment or modification from the terms of the Agreement shall be in writing and shall be effective only upon approval of all parties.
- n. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted.
- o. Attorney's Fees. If any party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorney's fees, costs, and expenses, determined by a court sitting without a jury, which shall be deemed to have accrued on the commencement of such action.

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- p. Notices. Notices hereunder shall be given in writing by hand delivery or by United States mail, return receipt requested, postage prepaid addressed to:

If to City: Karen Churchard
Tourism & Events Director
Tourism and Events Department
City of Scottsdale
7506 E Indian School Rd.
Scottsdale, AZ 85251

If to SGA: French Thompson
Scottsdale Gallery Association
PO Box 2045
Scottsdale, AZ 85252-2045

By notice from time to time, City or SGA may designate any other address for receiving mailed notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

- q. Third Parties. There are no third party beneficiaries to this Agreement.
- r. Employment of Unauthorized Workers. SGA shall comply with A.R.S. §23-211, et seq. and all other applicable federal, state and local laws and regulations that relate to SGA's employees (collectively, the "Unauthorized Worker Laws"). SGA shall cause its contractors to comply with the Unauthorized Worker Laws as respects the contractors' employees. Without limitation, SGA warrants and represents pursuant to A.R.S. §41-4401(A)(1) that SGA and its contractors comply with A.R.S. §23-214(A). Pursuant to A.R.S. §41-4401(A)(2), a breach of this paragraph shall be a material breach of this Agreement and an event of default, which shall entitle City to exercise any and all remedies described in this Agreement or otherwise available at law or equity, including without limitation termination of this Agreement. However, pursuant to A.R.S. §41-4401(C), SGA shall not be deemed to be in material breach of the warranty if SGA and its contractors establish that they have complied with the employment verification provisions prescribed by §274A and §274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). City shall have the right to inspect the records and papers of SGA and its employees, and of SGA's contractors and their employees, to ensure that SGA and its contractors are in compliance with this paragraph.
- s. Authority. The person executing this Agreement on behalf of the SGA warrants and represents to have full power and authority on behalf of SGA to enter into and perform this Agreement.
- t. SGA certifies that it is not currently engaged in and agrees for the duration of the contract to not engage in a boycott of Israel as defined in A.R.S. §35-393.

**Scottsdale Gallery Association
Marketing Matching Fund**

City Council Meeting
February 20, 2018

Background

Primary purposes of the Marketing Advertising Incentive Program:

- Provide matching marketing funds through a reimbursement of qualifying marketing paid expenses.
- Encourage innovative and collaborative marketing programs by the business community, hospitality industry and attractions.
- Increase visitation to Old Town Scottsdale by strengthening the area's image as a competitive, attractive, culturally-rich and diverse destination.
- Support projects that reach targeted niche markets.

Analysis & Assessment

- The SGA expanded its Guide to include the city's Public Art and city-owned cultural attractions located within the Scottsdale Arts District.
- Initial printing is 35,000, which will be distributed monthly to at least 25 hotels and resorts and mailed to 4,000 homes that sold for more than \$800,000 in the last five years.
- Second printing of 20,000 copies will be direct mailed to Phoenix Metropolitan homes.
- Includes full page ad promoting Old Town Scottsdale, logos of the City of Scottsdale and Experience Scottsdale on the first page and the back cover of the Guide.

Requested Action

Adopt Resolution No. 11033 authorizing contract No. 2018-028-COS with Scottsdale Gallery Association to match Scottsdale Gallery Association's investment in its 2018 Scottsdale Arts District Guide up to \$30,000.